

NANNIE EDWARDS

IBLA 94-579

Decided July 19, 1994

Appeal from a decision of the New Mexico Office, Bureau of Land Management, finding mining claims abandoned and void. NMMC 154512 through NMMC 154519.

Decision affirmed; stay denied.

1. Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption--Rules of Practice: Appeals: Stay

No grace period is allowed by Departmental regulation 43 CFR 3833.0-5(m) in which to file the certificate required by 43 CFR 3833.1-7 of persons seeking the small miner's exemption from payment of the annual claim rental fee. Since the rental fee for the claims at issue was not paid, and the claimant seeking exemption from payment did not timely file qualifying documentation of entitlement to exemption on or before the due date for such filing, her claims affected by the failure to pay or file were extinguished automatically by operation of law albeit she did not intend to relinquish them.

APPEARANCES: Nannie Edwards, Hebo, Oregon, pro se; Margaret Miller Brown, Esq., Office of the Solicitor, Department of the Interior, Southwest Region Field Office, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Nannie Edwards has appealed from a May 10, 1994, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring the Goldsboro #1-#4, Lookout #1-#3, and Red Rock mining claims, NMMC 154512 through NMMC 154519, abandoned and void for failure to timely file a small miner's certificate of exemption from payment of rental fee pursuant to Departmental regulation 43 CFR 3833.1-7. Appellant also seeks a stay of the BLM decision, contending that she ultimately did file the certificate by mailing it to BLM on September 2, 1993. She argues that this late mailing constituted substantial compliance with the regulation, a circumstance which, when considered with other equitable considerations and the hardship that cancellation of her claims will cause, justifies issuance of a stay pending consideration of her appeal.

[1] To be entitled to a stay of the BLM decision, appellant must demonstrate, among other things, that there is a likelihood she will prevail on appeal. See 43 CFR 4.21(b)(1)(ii); Clay Worst, 128 IBLA 165, 166 (1994). The record before us, however, establishes that she cannot prevail because her claims were extinguished by operation of law when she failed to either pay the mining claim rental fee or timely apply for exemption from the requirement that she do so.

Appellant admits she did not file a timely certificate claiming exemption from payment of the annual mining claim rental fee as required by 43 CFR 3833.1-7. Her late-mailed exemption certificate was not filed with BLM until September 7, 1994; the regulation requires that the document be filed not later than August 31, 1994. See 43 CFR 3833.1-7(d). No grace period for filing late certificates of exemption has been provided by Departmental regulation; those documents must be received by BLM on or before the date required by regulation. See 43 CFR 3833.0-5(m). This strict filing requirement is imposed in recognition of the requirement imposed by Congress that, for every unpatented mining claim, "each claimant shall, except as otherwise provided by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993." 106 Stat. 1378.

While the quoted Act did provide for an exemption from payment of the required fee for small miners under specified conditions, appellant's failure to qualify for the small miner exemption or to pay the \$100 claim rental on or before August 31, 1993, resulted in extinguishment of the affected claims by operation of law notwithstanding her intention to continue to hold them. See Lee H. Rice, 128 IBLA 137, 141 (1994). Inasmuch as appellant admittedly had neither paid the claim rental fee nor qualified for an exemption from such payment by filing the necessary certificate on or before August 31, 1994, her claims were extinguished by operation of law despite her intention to maintain them, albeit there were compassionate arguments and equitable considerations in her favor. The record on appeal establishes that she failed to qualify for a small miners exemption on or before August 31, 1994, because she failed to timely apply for it; and because she also did not pay the \$100 claim rental fee on or before that date her claims then became abandoned and void by operation of law, and BLM correctly so found.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the application for stay is denied and the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge